

**MINUTES OF LAYTON CITY
COUNCIL MEETING**

MARCH 21, 2013; 7:07 P.M.

**MAYOR AND COUNCILMEMBERS
PRESENT:**

**MAYOR J. STEPHEN CURTIS, MICHAEL
BOUWHUIS, JOYCE BROWN, JORY FRANCIS
AND SCOTT FREITAG**

ABSENT:

BARRY FLITTON

STAFF PRESENT:

**ALEX JENSEN, GARY CRANE, TRACY PROBERT,
SCOTT CARTER, DAVE PRICE, TERRY COBURN,
BILL WRIGHT, PETER MATSON AND THIEDA
WELLMAN**

The meeting was held in the Council Chambers of the Layton City Center.

Mayor Curtis opened the meeting and excused Councilmember Flitton. Boy Scout Bryson McKay with Troop 159 led the Pledge of Allegiance. Councilmember Bouwhuis gave the invocation. Scouts from Troops 159 and 630 were welcomed.

MUNICIPAL EVENT ANNOUNCEMENTS:

Councilmember Brown indicated that the April Family Recreation Program activity would be Flap Jack Friday and Bingo. She said this was a free activity and would be held at the Central Davis Jr. High gymnasium on April 19th. Councilmember Brown said pancakes would be served and there would be bingo with fun prizes.

CONSENT AGENDA:

PUBLIC WALKWAY, ACCESS AND UTILITY EASEMENT FROM KOLL/PER WOODLAND LLC (KOLL) TO ALLOW POWER AND WATER CONNECTIONS AND VARIOUS PARK IMPROVEMENTS ON PRIVATE PROPERTY – 1536 AND 1544 NORTH WOODLAND PARK DRIVE – RESOLUTION 13-08

Scott Carter, Parks Planner, said Resolution 13-08 was a public walkway and access easement agreement with Koll Properties to allow power and water connections, and various park improvements on their property. He said the agreement would allow the City to go onto the Koll property and construct water connections, power connections, sidewalk, lighting, irrigation and landscaping in relation to the detention pond park that was being built in that area. Scott said Staff recommended approval.

COOPERATIVE AGREEMENT WITH KOLL/PER WOODLAND LLC (KOLL) ESTABLISHING THE TERMS OF A PUBLIC ACCESS EASEMENT – 1536 AND 1544 NORTH WOODLAND PARK DRIVE – RESOLUTION 13-07

Scott Carter said this was a cooperative agreement with Koll that defined the easement agreement discussed in the previous item. He said the City would be building an additional berm, making a power connection and a water connection for the irrigation system. Scott said construction would begin next Wednesday with completion in June. He said Staff recommended approval of the cooperative agreement, Resolution 13-07.

PROPOSAL AWARD – BOWEN, COLLINS AND ASSOCIATES – PROFESSIONAL ENGINEERING SERVICES FOR THE STORM WATER MASTER PLAN – RESOLUTION 13-14

Terry Coburn, Public Works Director, said Resolution 13-14 authorized the execution of an agreement with Bowen, Collins and Associates for engineering services for the Storm Water Master Plan project. He said the project would provide the City with an updated Storm Water Master Plan, hydrology calculations, impact fee

facility plan, and impact fee analysis and rate study.

Terry said the State of Utah Division of Emergency Management selected a consultant, URS, to prepare updated FEMA 11-year storm water flood plain maps for the Davis County area. These updates were to correct and update the hydrology and flood insurance rate maps for Layton City stream channels. The City had coordinated with the consultant for the past year to provide accurate and reliable storm water data. After reviewing some of the results of the preliminary mapping with URS, Public Works Engineering had concerns about the accuracy of these studies and the negative impacts this would have to Layton City residents.

Terry said in order to provide correct and reasonable data to FEMA, Layton City submitted an appeal to the Division of Emergency Management and was proposing to retain a specialized consultant, Bowen, Collins and Associates, to assist with providing more accurate hydrology and flood plain mapping. Terry said there were a limited number of consultants that had the experience and were qualified by FEMA to perform these studies. He said Layton City had selected Bowen, Collins and Associates, based on their work history and the qualifications of the employees that had a specialized working knowledge with FEMA, to perform the studies.

Terry said Layton City Public Works Engineering was partnering and providing a substantial amount of information for the Storm Water Master Plan. The fee to complete the services was \$81,523. The design services were currently budgeted for this fiscal year. Terry said Staff recommended approval of Resolution 13-14.

Councilmember Bouwhuis asked what kind of documentation and what kind of fee increase proposal would they provide.

Terry said they would provide anything related to storm sewer impact fees; things that might need to be updated or adjusted.

Councilmember Bouwhuis asked if they were projecting 20 or 30 years out.

Terry said he thought that it would be 10 to 15 years.

BID AWARD – BRINKERHOFF EXCAVATING AND CONSTRUCTION – 2013 SANITARY SEWER CONSTRUCTION – OAK LANE BETWEEN COUNTRY OAKS DRIVE AND 2350 EAST AND COLONIAL AVENUE BETWEEN ADAMS STREET AND LINDSAY STREET – RESOLUTION 13-13

Terry Coburn said Resolution 13-13 authorized the execution of an agreement with Brinkerhoff Excavating and Construction for the 2013 Sanitary Sewer Construction project. He said the project included the construction of 2,575 lineal feet of new pipe, manholes and associated work items. Terry said this project would upgrade and relocate lines into the City's right of way for better efficiency. He said seven bids were received with Brinkerhoff Excavating submitting the lowest responsive, responsible bid in the amount of \$493,784.25; the engineer's estimate for the project was \$525,000. Terry said Staff recommended approval.

BID AWARD – HUNT ELECTRIC INC – ANNUAL STREET LIGHT INSTALLATION AND MAINTENANCE – RESOLUTION 13-10

Terry Coburn said Resolution 13-10 authorized the execution of an agreement with Hunt Electric for the Annual Street Light Installation and Maintenance project. He said the project included installation of approximately 160 street lights, conduit, copper cable, street light maintenance and associated items. Terry said the project was to install lights for City lighting projects, for new subdivisions which had purchased City lights, and for ongoing street light maintenance. He said nine bids were received, with Hunt Electric submitting the lowest responsive, responsible bid of \$159,069.46; the engineer's estimate was \$200,000. Terry said Staff recommended approval.

Councilmember Brown said the cost of putting new lights in new developments had been covered by the developers.

Terry said that was correct.

BID AWARD – PROFESSIONAL PIPE SERVICES (PRO-PIPE) – 2012 CLEANING AND TELEVISIONING OF SANITARY SEWER LINES – RESOLUTION 13-12

Terry Coburn said Resolution 13-12 authorized the execution of an agreement with Professional Pipe Services for the 2012-13 Cleaning and Televisioning of the Sanitary Sewer Lines project. He said Resolution 13-12 authorized the cleaning and televisioning of approximately 124,000 lineal feet of sanitary sewer mains, varying in size from 6 to 15 inches, located throughout the City. Terry said this was an ongoing project to help improve the condition of the sanitary sewer system and evaluate where any additional repairs were needed. He said three bids were received with Pro-Pipe submitting the lowest responsive, responsible bid in the amount of \$92,763.60; the engineer's estimate was \$125,000. Terry said Staff recommended approval.

Councilmember Brown asked how many years it took to do all of the pipes in the City.

Terry said between 2 and 4 years; the City had a very aggressive sanitary sewer maintenance program.

ACCEPTANCE OF QUIT-CLAIM DEED FROM HORSESHOE PROPERTIES AND TRANSFER OF SAME PROPERTY TO UTAH DEPARTMENT OF TRANSPORTATION (UDOT) FOR INSTALLATION OF A TRAFFIC SIGNAL – 1370 NORTH MAIN STREET – RESOLUTION 13-11

Terry Coburn said a new traffic signal was being proposed by UDOT at the intersection of Angel Street and Main Street. He said a portion of the land for the proposed signal, owned by Horseshoe Properties, was being dedicated to the City. The City was deeding the same property to UDOT for the new signal. Terry said Resolution 13-11 would accept the property from Horseshoe Properties and transfer the same property to UDOT. He said Staff recommended approval.

Councilmember Freitag said this signal had been needed for a long time. He thanked Staff for getting this accomplished.

Councilmember Brown asked if this would help the alignment of that intersection.

Terry said they would line up the intersection and do what was needed to make it conform to the standards.

Mayor Curtis indicated that Main Street was owned by UDOT; it had taken a long time and a cooperative effort to get this signal constructed.

FINAL PLAT APPROVAL – FOOTHILLS AT CHERRY LANE, PHASE 5 – APPROXIMATELY 1925 EAST OAKRIDGE DRIVE

Bill Wright, Community and Economic Development Director, said this was final plat approval of Phase 5 of the Foothills at Cherry Lane Subdivision, located at approximately 1925 East Oakridge Drive. Bill identified the property on a map and indicated that this was the last phase of the subdivision.

Bill said the property contained 2.6 acres and the proposal was to develop 8 lots. He said the property was zoned R-1-10 and all the lots met the requirements of the zone. Bill said the Planning Commission recommended approval and Staff supported that recommendation.

MOTION: Councilmember Freitag moved to approve the Consent Agenda as presented. Councilmember Brown seconded the motion, which passed unanimously.

CITIZEN COMMENTS:

Mayor Curtis indicated that the City had received several emails this last week about a proposed development on Oakridge Drive, and he thought that most people in attendance were here to speak to that issue. He asked if there was anyone that wanted to speak to a different issue first.

Arvin Brown, 1320 North 2575 East, expressed concerns about paving that was done on Oakridge Drive by Brighton Homes. He said they did a sub-par job.

Terry Coburn said the City was well aware of that problem. He said the developer would be replacing the asphalt once the weather improved.

Mayor Curtis asked Gary Crane, City Attorney, to provide some history on the Oakridge Drive property that was in question.

Gary Crane said from a legal perspective, the Council wanted him to go over where the process was at, and how the City arrived to this point. He said the property in question was several acres on Oakridge Drive that had been zoned multi-family since the days of East Layton. Gary said the property was owned by Betty Camper. The property was originally an orchard, but at some point Ms. Camper built two 4-plexes on the property along with the home that was located on the property. He said there was also a rather large pipeline and easement that ran down the center of the property that was a high-pressure oil pipeline. Gary said the property abutted a new subdivision to the west.

Gary said there were two types of uses on a property; a permitted use and a conditional use. He said permitted uses were those uses that were permitted on the property by right, and the other uses were uses that were permitted on the property with conditions. Most permitted uses were approved by City Planning Staff; in order for them to be approved there was no approval or coverage by the City Council when those permitted uses were approved. A conditional use would go through a public process, which involved going to the Planning Commission and then the City Council for their final approval. Gary said the reason the City Council hadn't heard about this proposal yet was because the application was very preliminary. He said the reason this proposal would even go through a public process was mainly because there was some subdivision that needed to take place on the property, and there was also considerable site plan review.

Gary said this proposal would go through a public process, which would include a review by the Planning Commission. He said the Planning Commission could look at things such as effect on surrounding uses, changes in elevation, access, and environment issues, before giving subdivision approval. Gary said typically, the Council didn't become involved in the process until such time as the matter was before them formally. He said the proposal would come to the Council after the Planning Commission made their recommendations.

Gary said somebody made a request from the City for a copy of the information submitted by the developer, which was public record. He said the information that was provided was similar to the very first draft of an essay; the project may look entirely different once the entire process was completed. Gary said everyone needed to understand that the property had been zoned multi-family for a long time, even though the property owner never elected to develop the property as multi-family. He said the City's responsibility, both the Staff and the Council, would be to balance the interests of the vested property owner, and the concerns of the neighbors and abutting property owners.

Gary said the people here this evening were ahead and in advance tonight simply because somebody received a copy of the initial drawing, which was not anywhere near what the plan would probably look like in the end. He said there would be a thorough process gone through by the Planning Commission and the Council where citizens would have an opportunity to give input.

Kathy Palmer, 1715 East Ridgeview Circle, said she understood that the property was zoned multi-family when it was in East Layton. She said when the property was incorporated into Layton, no one was aware that

the property was zoned multi-family, or they would have changed the zoning because it wouldn't be in compliance with the Master Plan. Ms. Palmer said there was no other place in Layton City where apartment buildings abutted \$600,000 homes.

Kristen Baaney, 2074 East 1325 North, displayed a map of the property proposed for development. She indicated that traffic, particularly by East Layton Elementary, was already a problem; this development would only compound the problem. Ms. Baaney expressed concerns about the impact on the schools and public safety. She said there were no other 3-story buildings in the area because it was in a residential area. Ms. Baaney said they understood that something would be built on the property, but they wanted people that would be vested in the community; they felt apartments would attract a more transient group of people. They wanted something that would benefit the community and they did not feel that apartments would benefit the community.

Marty Asay, 1412 North 1675 East, asked when the Planning Commission meetings were held and if they were open to the public.

Mayor Curtis said they were public meetings and they were held the 2nd and 4th Tuesdays of the month.

Someone from the audience asked what the process moving forward would be.

Bill Wright said the application for a subdivision was being reviewed by the Planning Staff, which included Planners, Engineers, and the Fire Department. He said Staff had interacted with the developer several times to inform them of what Code elements would come into play with what they had proposed as a subdivision. Bill said when that process was completed, and if the developer desired to continue, a notice would be published for a Planning Commission meeting, which would include public notice signs being posted on the property. He said Staff would be happy to make information available to the group so that they could notify individual residents in the area. Bill said residents would be given an opportunity to be heard at that meeting.

Kathy Palmer asked if rezoning the property to what it should be zoned was out of the question. She said that was clearly a mistake simply to benefit the Camper family.

Gary Crane said the presumption was that when a City Council, whether it was East Layton or Layton City, zoned a piece of property, there was a rational basis for doing it, whether there was or there wasn't. He said that was the presumption the courts look at. Gary said this was typically called spot zoning, and spot zoning could be challenged, but there was a period of time after the zoning was put in place. After that period of time lapsed, the zoning could no longer be challenged. Gary said once a piece of property was zoned by a City Council, it was zoned that until it was changed by a City Council in the future. He said when cities changed hands, the zoning that was in place in the old city remained in the new city until the new city determined that it wanted to change the zoning.

Gary said cities had to live by the law, otherwise developers sued cities. He said some of the biggest lawsuits in the State were related to land use. Gary said Tooele had just undergone a \$22,000,000 judgment for violating the law. He said an individual in the State of Utah was vested in the zone, which meant that they had the absolute right to do whatever the law allowed in the zone, on the date that they filed a completed application. Gary said if that right was taken away by down-zoning the property, the property owner had to be compensated, which usually meant that the City would be sued to compensate them for it. He said the property owner had the vested right, at the time they filed the application, to develop according to the R-M1 zone; zoning the property something different at this point, with a current application vested, would be a very difficult, if not impossible, thing for the City to do. Gary said the City would have to work within the zoning ordinance; that was why the Staff was working with the developer to try and come up with solutions to make it more compatible with surrounding uses, which may mean a reduction in density; it may mean doing some adjustments because of the pipeline. He said the City didn't know how the property would develop until they had the opportunity to discuss all of these options with the developer.

Gary said there had been a lot of requests from residents to down-zone the property, but quite frankly if the

City down-zoned the property it would buy the property.

Ms. Palmer said the property could be resold in a heartbeat to a developer that would be willing to develop single family homes.

Gary said if it was more profitable for a developer to develop single family homes on the property then a developer would put single family homes on the property. He said most likely the property would not be single family, nor would it be at the highest density allowed under the R-M1 zone; it would likely be something in between those two densities. Gary said bottom line, the City could not down-zone the property.

Ms. Palmer said she heard Gary say that the City could make the property owner whole. For instance if the City spent \$100,000 to purchase the property, or make the owner whole, it could be rezoned to single family. She asked why the City wouldn't do that.

Gary said everything was an option. He said for a fact, \$80,000 or \$100,000 was not what the City would end up paying to down-zone the property; it could go into the millions of dollars in order to acquire a piece of property through down-zoning.

Ms. Palmer said not for that size of property.

Gary said that was an option, but it would be a very expensive option.

Alex Jensen, City Manager, said the feedback was good, but he encouraged everyone to let the process run its course. He said Layton City was a professional city; the City dealt with thousands of these kinds of issues each year. Alex said the City had professional Staff and it had relationships with the development community. He said the City's assurance to the residents was that the application would be thoroughly vetted; the City looked at every possible angle. Alex said the end solution was not always perfectly satisfactory to everybody; that was impossible when there were competing interests. He said he thought the residents would find, if they stayed involved in the process, that the City Staff and the elected officials would be anxious to hear their concerns, just as they would be anxious to hear the concerns of the applicants. Alex said his advice would be to focus their energy on trying to work with the developer and the City to make it the very best possible project, as opposed to hoping that it would be down-zoned.

Alex said Gary Crane was the foremost municipal land use attorney in the State of Utah, which was a well know fact. He said Gary's fingers were on almost every piece of land use legislation that happened in the State. Alex said what Gary had stated was true; there was no bias in what he said because he understood how these processes worked. He said the enthusiasm was wonderful, and the input was absolutely essential. Alex asked the residents to stay in contact and let the process work. He said there would be plenty of opportunity for everybody to give their input, and see if the City, developer and residents could work together to create something that would be a positive. Alex said if in the end that was not successful, the residents would have ample opportunity to state that the process was allowed to run and they were still unsatisfied. He said to do that before the process was even started may be just a tad counterproductive. Alex said again, the City did this all the time and it was certainly a much better process when the citizens were involved. He thanked them for their involvement.

Todd Robbins, 2056 East 1325 North, said he thought it was in the City's best interests to work with the developer to make sure he did something that was positive. He said he feared that three-story hodge-podge apartments interspersed with residential areas would not be an attractive draw for people to relocate to Layton. Mr. Robbins expressed appreciation to the Council for responding to their emails.

Arvin Brown commented about noise associated with dumping larger trash dumpsters early in the morning.

Kris McKay, 2369 Oakridge Drive, asked what the density an R-M1 zone would allow and what the effect would be considering the 4-plex that was already located on the property.

Bill Wright said the R-M1 zone allowed a wide range of land uses from single family detached homes up to multi-family attached homes at 16 units per acre. The height limit was 35 feet, which was not much higher than the 30 feet allowed in the surrounding R-1-10 single family zones. Bill said the existing units would count toward the density if they were to remain on the property.

Scott Green, 1434 East Cherry Lane, said his concern was in representing Kays Creek Irrigation Company. He said as apartments were developed, a lot of cars sat in parking lots that dripped oil. Mr. Green said he was concerned with oil going into the pond where Layton City and Kays Creek Irrigation had an agreement for a fishery. He said he hoped they put up the necessary oil retention ponds, or whatever they needed to do. Mr. Green said after time apartments became a little bit run down and a lot of people didn't care about what they left in the parking lots.

Christine Ching, 1182 North 1725 East, asked if the oil pipeline easement allowed for this type of density near the pipe line.

Gary Crane said there were a number of factors involved; one would be the pipeline company, and those had been resolved by the developer. He said there could be other factors considered by the City during the course of the process including access over the pipeline and safety. Gary said it was legally okay to put development over the easement if all of those other concerns were satisfied.

Kathy Palmer asked if townhomes were considered multi-family.

Alex said there were a range of options the developer had under this zone; the best course may be to let that play out and let the developer explore those options with the Staff, and taking public input, which may end up with a similar proposal or a very different proposal.

Jared Yeates, Developer/Property Owner, said they intended to build their personal residences on the property to the north; they would be backyard neighbors to this project. Mr. Yeates said he wasn't a developer coming from outside the area; he had a vested interest in the community. He said he appreciated Mr. Jensen's comments about letting the process run its course. Mr. Yeates said Layton City had great Staff and he was confident they would be able to work together to reach an agreeable decision.

Matt Yeates, Developer/Property Owner, said he appreciated all of the comments; he had known most of these residents most of his life. Mr. Yeates said they were willing to work this out. He indicated that there was a clipboard in the back and they would appreciate getting everyone's email address. Mr. Yeates said they would be contacting residents for neighborhood meetings.

Mayor Curtis said this had been a good experience. He expressed appreciation for the civil discourse.

Councilmember Freitag expressed appreciation for the feedback. He said when the Foothills at Cherry Lane development was approved, he remembered that the City took a lot of heat from the people that lived in that area about that development. Councilmember Freitag said at that time, the City worked with everyone involved to try and put a satisfactory development in; most people would now agree that it was a very nice development. He said it wasn't where it started, but that spoke well of all the comments that were made years ago. Councilmember Freitag said the Council was committed to try and make everybody happy and get to where it needed to be.

Councilmember Bouwhuis said he shared some of the concerns; he lived in east Layton. He said he moved to east Layton with a hope and an aspiration that he would have a great community. Councilmember Bouwhuis said it was one of the best places he had ever lived and the Council wanted to make sure Layton was built to the City that everyone expected. He said the Council was caught off guard by the emails; they weren't aware of the proposal until after talking with Staff. Councilmember Bouwhuis said now that the Council was aware, they would be vigilant, and would listen to the residents and the developer; they had to reconcile the interests of the residents, the developer and the City. He expressed appreciation for the comments and assured the residents that the Council was listening.

Councilmember Brown expressed appreciation to the residents for the manner in which they had presented themselves. She said often these types of meetings were not so cordial or nice.

Councilmember Francis expressed appreciation for the comments, and expressed appreciation to the Yeates brothers for being receptive. He said the best leverage, given that the property was already zoned multi-family, was that the Yeates brothers would be neighbors. Councilmember Francis encouraged the residents to work with the developers in a civil fashion. He said he was sure the Mayor and Council would be willing to participate in meetings with the residents and developers.

MOTION: Councilmember Freitag moved, and Councilmember Bouwhuis seconded, to adjourn the regular meeting and return to the work meeting at 8:38 p.m. The vote was unanimous.

The meeting adjourned at 8:38 p.m.

Thieda Wellman, City Recorder